SUPREME COURT OF THE UNITED STATES.

No. 88.—October Term, 1925.

Fidelity and Deposit Company of Maryland, Appellant, *vs.* Ed. C. Tafoya, Chairman, and Hugh H. Williams and Bonifacio Montoya, Members, constituting the State Corporation Commission of New Mexico, et al.	Appeal from the District Court of the United States for the District of New Mexico.

[March 15, 1926.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill in equity brought to prevent the State Corporation Commission of New Mexico from suspending the right of the plaintiff to do business in that State. A final decree was entered by which it was declared that the defendants intend to suspend that right "for the sole reason that the plaintiff has made payments to its agents in states other than New Mexico in connection with the procurement of business made, written and placed by the plaintiff in New Mexico"; that such payments are unlawful by virtue of § 2820 of the New Mexico Code of 1915, as amended by Chapter 195 of the Laws of 1921, and that the section so far as it makes such payments unlawful and authorizes the suspension because of this is constitutional. On this ground the bill was dismissed. The plaintiffs contending that the statute as construed and applied is contrary to the Fourteenth Amendment appealed to this Court.

The statute in question, § 2820 of the Code of 1915 as amended in 1921, purports to make it "unlawful for any insurance company authorized to do business in New Mexico . . . to pay, . . . either directly or indirectly, any fee, brokerage or other emolument of any nature to any person, firm or corporation not a resident of the State of New Mexico, for the obtaining, placing or

writing of any policy or policies of insurance covering risks in New Mexico. Any insurance company violating this section shall have its certificates of authority to do business in the State suspended for not less than one year''—the suspension to be removed only upon a written pledge that the section will be observed. This section has been repealed by an act of 1925, which substitutes the more moderate requirement that the policy must be delivered, the premium collected and the full commission retained by an agent in New Mexico, with authority to that agent to employ a licensed non-resident broker to collect the premiums, &c., and to pay him within limits. The question has been suggested whether this repeal does not require us to dismiss the case. But the Constitution of New Mexico provides that 'no act of the Legislature shall affect the right or remedy of either party . . . in any pending case' It is at least possible that the State Courts might hold that the plaintiff was still liable to lose its license on the old ground. Therefore it seems to us just that we should proceed to deal with the further questions raised, as both parties desire.

It is suggested that the District Court had no jurisdiction because the bill does not allege that the statute is unconstitutional, but only that the statute as construed and applied by the defendants is so. But even if the statute did not plainly purport to justify and require the threatened action, or if the bill fairly taken did not import a denial of the constitutionality of the law as applied to this case, the plaintiff still would be entitled to come into a Court of the United States to prevent such an alleged violation of its constitutional rights. *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20. *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278. *Cuyahoga River Power Co.* v. *Akron*, 240 U. S. 462.

Coming then to the merits we assume in favor of the defendants that the State has the power and constitutional right arbitrarily to exclude the plaintiff without other reason than that such is its will. But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result. *Frick* v. *Pennsylvania*, June 1, 1925. *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta*, 256 U. S. 350, 358. *Badders* v. *United States*, 240 U. S. 391, 394.

United States v. *Reading Co.*, 226 U. S. 324, 357. Thus the right to exclude a foreign corporation cannot be used to prevent it from resorting to a federal Court, *Terral* v. *Burke Construction Co.*, 257 U. S. 529; or to tax it upon property that by established principles the State has no power to tax, *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, and other cases in the same volume and later that have followed it; or to interfere with interstate commerce, *Sioux Remedy Co.* v. *Cope*, 235 U. S. 107, 203; *Looney* v. *Crane Co.*, 245 U. S. 178, 188. *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 114. A State cannot regulate the conduct of a foreign railroad corporation in another jurisdiction, even though the Company has tracks and does business in the State making the attempt. *New York, Lake Erie & Western R. R. Co.* v. *Pennsylvania*, 153 U. S. 628, 646.

The case last cited was one of an attempt to regulate the corporation's payments in another State. By the same principle on even stronger grounds the corporation cannot be prevented from employing and paying those whom it needs for its business outside the State. The difficulty was fully appreciated by the counsel for the appellee and he therefore sought to limit the generality of the words, at least in the case of agents, and to make out that the object was to prevent the use of dummy agents in the State. It was suggested that agents were paid by commissions at well known conventional rates and that the statute meant to forbid the dividing of these commissions, and in that way to prevent the work being done and paid for elsewhere, while nominal agents in New Mexico were paid small sums for the use of their names. In short it is said the purpose was to secure responsible men to represent the Company on the spot. But whether such an interpretation would save the act or not it is impossible to limit it in that way. It forbids the payment of any emolument of any nature to any person for the obtaining, placing or writing of any policy covering risks in New Mexico. The words go beyond any legitimate interest of the State, and although the decree is based only on payments to agents it does not declare that the payments thus made prevented the payment of appropriate commissions to the agents in the State nor does the statute limit its prohibition in that way.

The determination of the Commission to suspend the plaintiff purported to be based upon a letter written by it in reply to a

notice. In this letter it appeared only that agents or branch offices in other States were paid for services of value by commission on such basis as was agreed upon outside of New Mexico, but not that there was in any case a deduction from appropriate commissions inside the State. The threat and the decree, therefore, test the validity of the statute in its extreme application and furnish no ground for an attempt to read it as meaning less than it says. See further *Palmetto Fire Insurance Co.* v. *Beha*, C. C. A., Second Circuit, November 10, 1925; *St. Louis Compress Co.* v. *Arkansas*, 260 U. S. 346.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[March 15, 1926.]

The separate opinion of Mr. Justice McReynolds.

This cause was begun January 8, 1924. Defendants were the members of the State Corporation Commission and the Bank Examiner. Section 2814, Code of New Mexico, 1915, forbade the carrying on of business within the State by any insurance company "unless it shall procure from the Superintendent of Insurance a certificate stating that the requirements of the laws of this State have been complied with and authorizing it to do business." These certificates expired annually on the last day of February. In 1921 the powers and duties of the Superintendent of Insurance were transferred to the Bank Examiner under general control and supervision of the Corporation Commission.

Section 2820 of the Code, as amended, provided that no foreign insurance company shall transact business in the State except through duly appointed resident agents; declared it unlawful to pay any emolument to a nonresident for obtaining policies covering risks therein; and authorized the exclusion of any company which failed to observe this inhibition.

The bill alleges that although the complainant had been duly licensed to transact business in New Mexico for many years defendants were threatening to suspend the license therefor because of supposed violations of section 2820. It asks a decree declaring

that section unconstitutional insofar as payments to nonresidents for procuring insurance were prohibited; and that defendants be restrained from attempting to revoke or refusing to renew the license certificate.

The act effective March 20, 1925, codified the insurance laws of the State; expressly repealed former statutes regulating the business; transferred the powers of the Bank Examiner to the Corporation Commission, and charged the Superintendent of the Department of Insurance with general administration of the law. It sets up an entirely new system of control and contains no provision concerning payments to outside agents like the one challenged by complainant. It provides: "Upon the application of any insurance company for a license to transact an insurance business in the State of New Mexico, the Superintendent shall immediately satisfy himself that the said company . . . has . . . complied with all the . . . requirements of this Act, and shall thereupon be obligated to issue a license to the said company authorizing it to transact the forms of insurance permitted under its articles of incorporation and authorized under this Act for any one insurance company to transact."

The bill questions the validity of a statute which was repealed in 1925. There is no effective remedy which this or any other court can now grant under its allegations and prayers. The cause has become moot and should be treated accordingly.

Mr. Justice BRANDEIS and Mr. Justice SANFORD concur in this opinion.